IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9233 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA Sd/-
HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAMNABEN MANUBHAI
Versus
STATE OF GUJARAT AND ANOTHER

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Appearance :
MS MANISHA KALA with MR GM AMIN for the Petitioner
MR AJ DESAI, ASSTT GOVERNMENT PLEADER for the Respondents

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 19/11/2007

ORAL JUDGMENT

(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1. By this petition under Article 226 of the Constitution of India, the petitioner has prayed to direct the respondents to decide her application dated 11th July, 2006 made under Section 28-A of the Land Acquisition Act, 1894 (in short 'the Act') in respect of land bearing Survey No.283/2, situated in the sim of Devliya, Taluka Dhandhuka, District Ahmedabad. The petitioner also seeks a direction to declare award under Section 28-A of the Act and to pay the compensation with statutory interest.

2. The facts of the case stated briefly are that the petitioner's land bearing Survey No.283/2 admeasuring 0-23-52 Sq.Mtrs. was acquired for the purpose of Narmada Canal. Notification under Section 4 of the Act was published on 28.10.1993 and declaration under Section 6 of the Act was made on 16.5.1994. Award under Section 11 of the Act was made on 22.4.1996 and compensation was determined at the rate of Rs.0.82 paise per Sq.Mtr.

3. Being aggrieved by the aforesaid award, some of the claimants made reference applications under Section 18 of the Act before respondent No.1. The said references were registered as Land Acquisition Case Nos. 996 of 1998 to 1018 of 1998 before the 4th Additional Senior Civil Judge, Ahmedabad (Rural), District Court at Navrangpura. By judgment and award dated 17.4.2006, the Reference Court determined compensation at the rate of Rs.28/- per Sq. Mtr. with other statutory benefits.

4. As the petitioner had not filed any application under Section 18 of the Act, the petitioner filed an application under Section 28-A of the Act on 11.7.2006, within the period of limitation. It is a case of the petitioner that her application is pending before respondent No.1 since 11.7.2006, however, no proceeding has been initiated pursuant to the said application. It is, under these circumstances, that the petitioner has approached this Court seeking the reliefs referred to hereinabove.

5. In response to the averments made in the petition, respondent No.1- Special Land Acquisition Officer, Narmada Yojna Unit No. 3, Ahmedabad, has filed an affidavit-in-reply, stating that respondent No.1 has filed appeals before this Court challenging the award passed by the Reference Court alongwith applications for condonation of delay, being Civil Application No.9849 of 2007 to 9871 of 2007 in First Appeal Stamp No.1222 of 2007 to 1243 of 2007. It also averred that the award of the Reference Court being subject matter of appeal, the application under Section 28-A of the Act made by the petitioner cannot be decided as the application of the petitioner has to be decided after the market price has been decided in the first appeal. It is, therefore, prayed that the petition, being devoid of merit, be dismissed.

6. We have heard learned advocate Ms. Manisha Kala for Mr. G.M. Amin, learned advocate for the petitioner, and Mr. A.J. Desai, learned Assistant Government Pleader, for the respondents.

7. Mr. A.J. Desai, learned Assistant Government Pleader, has drawn our attention to the decision of the Supreme Court in the case of ***State of Maharashtra Vs. Manakchand Pyarmal***[(1996)1 SCC 297], wherein it has been held that when an award of the Reference Court is subject matter of appeal pending decision in the High Court, appropriate course would be to keep the Reference Application made under Section 28-A(1) of the Act pending till final disposal of the appeal in the Court, to submit that the issue involved in the present petition stands concluded by the said decision of the Supreme Court.

8. In the case of ***Babua Ram and others V. State of U.P. And another*** [(1995)2 SCC 689], the Apex Court has held as follows:

> *"39. The next question is whether the Collector/LAO on receipt of the application under sub-section (1) of Section 28-A is bound to redetermine the compensation while the award and decree under Section 26 is pending consideration in the appeal in the High Court or appellate forum. If he does so, whether award under Section 28-A(2) is illegal? It is settled law that the decree of the trial court gets merged in the decree of the appellate court which alone is executable. The finality of the determination of the compensation is attained with the decree of the appellate forum, be it*

the High Court or this Court. Take for instance that 'A', 'B' and 'C' are interested persons in the land notified under Section 4(1) and the compensation determined in the award under Section 11. 'A' received the compensation without protest. 'B' and 'C' received the compensation under Section 31 under protest and sought and secured reference under Section 18. The court enhanced the compensation from the Collector's award of Rs.10,000 to Rs.20,000. 'B' did not file appeal under Section 54 while 'C' filed the appeal. The High Court, suppose, further enhances the compensation to Rs.25,000/- or reduces the compensation to Rs.15,000 per acre. 'A' is a person aggrieved only to the extent of the excess amount awarded either by the award and decree of the court under Section 26 but he will not get the enhancement of further sum of Rs.5000 granted by the High Court in favour of 'C'. The decree of the High Court is the executable decree made in favour of 'C'. Unless redetermination is kept back till the appeal by the High Court is disposed of, incongruity would emerge. Suppose the State filed appeal in this Court under Article 136 against the High Court decree and this Court confirms the award of the Collector and sets aside the decree of civil court under Section 26 and of the High Court under Section 54. There is nothing left for redetermination. With a view to save 'A' or 'B' or the State from the consequences of such incongruous situations, the Collector/ LAO should stay his hands in the matter of redetermination of compensation till the appeal is finally disposed of and he should redetermine the compensation only on the basis of the final judgment and decree of the appellate forum. Adoption of such course, would not merely avoid the chance element in the claimants getting the amounts of redetermined compensation but also avoids needless burden on public exchequer. As soon as the award of the civil court is carried in appeal, it becomes obligatory for the Collector to keep the application/applications for redetermination of compensation filed within limitation pending,

awaiting decision by the appellate forum and to redetermine the compensation on the basis of the final judgment and decree. Normally the LAO would file the appeal against the enhanced compensation in a decree of either the civil court or the High Court and will know their pendency. In the case of appeal filed by the interested persons, the latter should inform the Collector/LAO of the pendency of appeal or otherwise comes to know of it should keep the applications for redetermination, received under sub-section (1) of Section 28-A within limitation pending, awaiting the decision by the appellate court. Before proceeding with the determination, he should obtain an affidavit from the party making the application under Section 28-A that no appeal against the award made under Section 26 relied upon by him was filed or if had been filed was disposed of by the appellate court and to produce the certified copy of decree and judgment, if already disposed of."

9. In view of the settled legal position enunciated by the Supreme Court in the decisions referred to hereinabove, considering the fact that the award of the Reference Court which forms the basis of the petitioner's application under Section 28-A of the Act, is already subject matter of appeal pending decision in this Court, respondent No.1 has rightly stayed his hands in the matter of re-determination of compensation till the appeal is finally disposed of.

10. In the light of the decisions cited hereinabove, the respondent No.1 is directed to keep the petitioner's application under Section 28-A of the Act pending till the final disposal of the appeal in this Court. The respondent No.1 shall take action

only on the basis of the judgment that may be rendered by this Court in the appeal. Until then, the matter shall be kept pending. The writ petition stands dismissed, subject to the above directions.

11. The petition is accordingly, disposed of. There shall be no order as to costs. Notice is discharged.

Sd/-
(A.M.KAPADIA, J.)

Sd/-
(HARSHA DEVANI, J.)

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